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10/723,881

11/26/2003

John A. Kolb

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10/27/2006

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EXAMINER

CIRIC, LJILJANA (LIL) V

ART UNIT

PAPER NUMBER

3744

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,881

Applicant(s)

KOLB ET AL.

Examiner

Ljiljana (Lil) V. Ciric

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006 and 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 5, 11, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 12-21 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2004 and 22 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20040112, 20051003, 20051114.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the first species or the embodiment of Figures 2 through 6 in the replies filed on March 7, 2006 and on June 22, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 5, 11, 22, and 23 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the replies filed on March 7, 2006 and on June 22, 2006.

Drawings

3. The formal drawings were received on October 28, 2004. These drawings are hereby approved.

4. The corrected drawings were received on June 26, 2006. These drawings are hereby approved.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 through 4, 6 through 10, 12 through 21, and 24 through 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are written in a generally run-on fashion and include plural conditional and/or alternative limitations which further render the intended scope of protection sought indefinite. Examples of unclear limitations in the claims follow.

With regard to claim 1 as written, it is not clear, for example, whether the limitation "the faces" in 8 refer back to the faces recited in line 7 of the claim or to the faces recited in line 3 of the claim.

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Also with regard to claim 1 as written, it is not clear, for example, whether the limitation “the first and second ends” in lines 9 and 10 refer back to the first and second ends recited in line 8 of the claim or to the first and second ends recited in line 4 of the claim.

The above limitations are only a few examples of numerous occurrences in the claims where different elements referred to in the claims are not clearly differentiated from each other by the use of distinct nomenclature as necessary.

Also, for example, there is no antecedent basis in the claims for the limitations “the lower manifold of the upper radiator portion” and “the upper manifold of the lower radiator portion” [claim 16, lines 27-28].

Also for example, the intended meaning of the limitation “extending substantially directly *therebetween*” [claim 21, lines 11-12] is not clear as written because it is not clear whether the limitation is intended to convey that the fluid-carrying tubes extend between the pair of manifolds, or between the manifolds and the front and rear faces, or between the front and rear faces of the second heat exchanger. Again, similar limitations containing the term “therebetween” occur elsewhere in the claims, and render these claims indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. As best can be understood in view of the indefiniteness of the claims, claims 1 through 4, 6 through 10, 12 through 21, and 24 through 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hedeon (made of record by applicant via previously filed IDS).

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Hedeen discloses a heat exchanger apparatus comprising a first heat exchanger such as radiator 40 and a second heat exchanger such as charge air cooler 42, with portions of each of the first and second heat exchangers being disposed in overlapping relationship relative to each other and with each of the heat exchangers including respective manifolds 44, 45, 48, and 49 along the sides thereof as shown in Figures 2 and 3, for example.

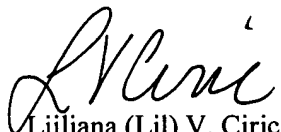
The reference thus reads on the claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner works a flexible work schedule but can normally be reached between 10:00 am and 6:30 pm on most weekdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on 571-272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Ljiljana (Lil) V. Ciric
Primary Examiner
Art Unit 3753

lvc